Supreme Court, U.S.
FILED
OCT 6 1988
JOSEPH F. SPANIOL, JR.
CLERK

(3)

No. 88-268

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

JAMES A. WILLIAMS,

Petitioner,

vs.

STATE OF GEORGIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

PETITIONER'S REPLY BRIEF IN SUPPORT OF WRIT OF CERTIORARI

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ARGUMENT AND CITATION OF AUTHORITY

In opposition to this Writ of Certiorari, Respondent has urged the proposition that this Court will not review a state court judgment which is based upon an adequate and independent state law ground. *See Berea College v. Kentucky*, 211 U.S. 45 (1908); *Fox Film Corp. v. Muller*, 296 U.S. 207 (1935). That doctrine, however, is inapplicable to the present case.

The decision in this case by the Supreme Court of Georgia, which held that the conduct of the District Attorney was not sufficiently offensive to mandate corrective action, was *not* based upon an *adequate* and *independent* state law ground. Respondent submits that the court based its decision upon Georgia law and rules of the State Bar of Georgia. Those grounds are not adequate and independent of the Constitution of the United States. A court may hold that certain actions are proper under the rules and laws of a state, and yet the actions can violate the Constitution of the United States. In such a situation, the state law ground for allowing such actions is not *independent* of the federal ground, because the actions must still be judged under the federal constitution after the actions have been approved under state law.

Furthermore, the Opinion of the Supreme Court of Georgia was not based upon an *adequate* state ground because the actions could be proper under state law and improper under the federal constitution. If federal law prohibits certain actions after state law has approved them, then the state law grounds for approving the actions are not adequate. The actions are prohibited *regardless* of state law.

The status of the present case, in which the actions were *approved* by the state court, differs greatly from

those cases cited by Respondent. In *Fox Film Corp.*, a contract was *struck down* under state law. 296 U.S. at 209. Thus, no matter how valid the contract might have been under federal law, it was invalid under state law, so it was absolutely invalid, based upon an adequate and independent state law ground. *See also Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945). Those cases contrast with the present case, in which the District Attorney's actions may be valid under state law but are nonetheless invalid because they are improper under federal law. Actions can be invalid for any number of reasons, but they can only be valid if they are valid under *every* applicable theory.

In further support of its argument that this Court should not review the present case, Respondent argues that there is no basis for a writ of certiorari because the Supreme Court of Georgia did not decide a federal issue in its Opinion. Whether the Court actually decided a federal issue, however, is irrelevant. So long as the federal issue has been raised for consideration by the state court, the issue has been preserved for consideration by this Court, regardless of whether the state court actually addressed the federal ground. It is unnecessary that the issue have been both presented *and* ruled on. *See Illinois v. Gates*, 462 U.S. 213, 218-19 and n.1 (1983). It is a "basic jurisprudential fact that not to decide is to decide. Federal rights 'are denied as well by the refusal of the state court to decide the question, as by an erroneous decision of it.' " *Super Tire Engineering Co. v. McCorkle*, 550 F.2d 903, 907 (3d Cir.), *cert. denied*, 434 U.S. 827 (1977) (citing *Lawrence v. State Tax Commission*, 286 U.S. 276 (1932)).

WHEREFORE, Petitioner James A. Williams respectfully requests that this Court grant certiorari on all points, reverse the holding of the lower court, and remand with direction either to dismiss the indictment or disqualify the District Attorney and his staff.

Respectfully submitted this 6th day of October, 1988.

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